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Goldwater's FoIA bill exemptions criticized

By James E. Roper

Four witnesses asked a Senate Committee (June 28) to make sure that Federal Courts have a right to review any decisions the Central Intelligence Agency may make to exempt some of its files from disclosure under the Freedom of Information Act.

The witnesses testified on a bill by Sen. Barry Goldwater (D-Ariz.) that would allow CIA to designate certain "operational" files as exempt from disclosure.

Goldwater's stated aim is to protect national security secrets but at the same time require CIA to provide other information requested under FoIA. But who would make sure that CIA exempted files only to protect state secrets and not to hide politically embarrassing material or its own blunders?

Let anyone who is denied information from CIA under FoIA have the right to seek judicial review said the four witnesses. They were: Charles S. Rowe of the American Newspaper Publishers Association and editor and publisher of *Fredericksburg* (Va.) *Freelance-Star*; Steven Dornfeld, president of the Society of Professional Journalists, Sigma Delta Chi; Mark H. Lynch of the American Civil Liberties Union; and Sen. David F. Durenberger (R-Minn).

They also agreed that the Senate Select Committee on Intelligence, which was hearing their testimony, should exercise close oversight of CIA's actions on disclosure. The ACLU's Lynch said CIA's current responses to requests under FoIA are "grudging and uncooperative." CIA now takes from two to three years to answer some requests and complains that it has to go through the motions of researching some requests that obviously never can be answered.

A year ago, CIA wanted to exempt all of its files from disclosure under FoIA but now is going along with the Goldwater Bill. The measure would allow CIA to designate as exempt its "operational" files dealing with foreign intelligence, counter-intelligence, terrorism and exchange with foreign governments. CIA would still have to respond to an individual's request for information about his own file at CIA and about other matters that do not disclose other security matters such as intelligence-gathering methods or sources.

"No representative of the newspaper business wants to in any way endanger the lives of those people involved in maintaining that security," said Rowe, who was speaking for ANPA. "We must trust the veracity of the statements by CIA officials that passage of S.1324 (the Goldwater Bill) would not result in additional information being withheld by the CIA, but would free the agency from the search and review of information that is currently exempted from release. We also must and will rely on the wisdom and diligence of the congressional oversight process . . .

"We believe further refinement of S. 1324 is necessary to ensure that the immense power that would be invested in the director of the CIA with the passage of this bill does not upset the delicate balance of the government's need for secrecy, the public's right to know and an individual's right to privacy."

Dornfeld said SPJ. SDX had "a bushel basket of questions" about the bill, including: "under the bill's extraordinarily broad definition of 'operational file' what is to prevent more and more information from being hidden, including information now releasable under FoIA?"

"Any cynicism journalists have about the true intent of S. 1324 derives from a fear that this bill is just another deep pothole on the same one-way street that has already given us the president's March 11 directive on national security information, last year's executive order on classification, the Justice Department's policy on fee waivers and a retrogressive package of FoIA amendments," Dornfeld said.

Durenberger took the witness stand before the committee. "I can accept," said the senator, "the CIA's need to reduce the burdens and risks associated with searching operational files. But the CIA, in turn, must accept the need for some sort of judicial review of cases in which the FoIA search exemption is asserted. Often this may require nothing more than a CIA affidavit explaining that a certain file contains materials on an operation the existence of which cannot be declassified. But this is far better than trusting a 'designation' by the director of Central Intelligence. If this system is to work, we must build into it the legitimacy and self-policing that come from submissions under oath.

A Justice Department witness, Mary C. Lawton, gave the Goldwater Bill "wholehearted support" as likely to reduce the amount of FoIA litigation that Justice has to handle. Retired Major General Richard X. Larkin of the Association of Former Intelligence Officers supported the bill but said it should cover other intelligence agencies as well as CIA. Speaking as an individual, John Norton Moore, the chairman of the American Bar Association Committee on Law and National Security, said, "ultimately the only satisfactory solution is a more general exclusion for the intelligence community from the requirements of FoIA."

After the testimony, Goldwater announced that the intelligence committee, which he chairs, would act on his bill in July after the senate returns July 11 from its independence day recess. The Goldwater Bill, applying only to CIA, is separate from another bill and amendments, waiting for senate floor action, to alter FoIA generally.